

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of:	)	
	)	
Adelphia Cable Communications	)	CSR 6387-E
	)	
Petition for Determination of Effective	)	
Competition in Beverly Hills, Calabasas, Ojai	)	
and Palmdale, CA	)	
	)	
	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: March 2, 2007**

**Released: March 5, 2007**

By the Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION**

1. Adelphia Cable Communications, on behalf of its affiliates (“Adelphia”),<sup>1</sup> has filed a petition with the Commission pursuant to Sections 76.7, 76.905(b)(2) and 76.907 of the Commission’s rules<sup>2</sup> for a determination that its cable systems serving four Southern California franchise areas (the “Franchise Areas”)<sup>3</sup> are subject to effective competition pursuant to Section 623(a)(1) of the Communications Act of 1934, as amended, (“Communications Act”),<sup>4</sup> and are therefore exempt from rate

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<sup>1</sup> Comcast Corporation and Time Warner recently acquired the assets of Adelphia Communications Corporation. *In the Matter of Applications for Consent to the Assignment and/or Transfer of Control of Licenses: Adelphia Communications Corporation (and subsidiaries, debtors-in-possession), Assignors to Time Warner Cable Inc. (subsidiaries), Assignees; Adelphia Communications Corporation (and subsidiaries, debtors-in-possession), Assignors and Transferors to Comcast Corporation (subsidiaries), Assignees and Transferrees; Comcast Corporation, Transferor, to Time Warner, Inc.; Transferree; Time Warner, Inc., Transferor, to Comcast Corporation, Transferree*, 21 FCC Rcd 8203 (2006). As part of that proceeding, the parties requested that the Commission’s grant of its consent to the transactions include and accommodate, as appropriate, applications that will have been filed by such licensees relating to such cable systems that are pending at the time of the consummation of the transactions. In this matter, we also will take that to include pending petitions for effective competition. Therefore, the action we take in this proceeding will transfer to the successor-in-interest, either Comcast or Time Warner, as it relates to these Franchise Areas.

<sup>2</sup> 47 C.F.R. §§ 76.7, 76.905(b)(2) and 76.907.

<sup>3</sup> Adelphia Petition at 1 (requesting that the Commission find effective competition in Beverly Hills (CA0457), Calabasas (CA1482), Ojai (CA0301), and Palmdale (CA0342)). Adelphia withdrew the City of Ventura (CA0024) from its petition. *See Motion to Withdraw Ventura, CA From Petition for Special Relief*, CSR No. 6387-E (filed Oct. 12, 2004). This motion is hereby granted.

<sup>4</sup> 47 U.S.C. § 543(a).

regulation.<sup>5</sup> The City of Beverly Hills (the “City”) has filed an opposition and Adelphia has filed a reply.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,<sup>6</sup> as that term is defined by Section 623(1) of the Communications Act and Section 76.905 of the Commission’s rules.<sup>7</sup> The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.<sup>8</sup>

## II. DISCUSSION

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if its franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors (“MVPD”), each of which offer comparable programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in the franchise area.<sup>9</sup> Turning to the first prong of this test, we find that the DBS service of DIRECTV, Inc. (“DIRECTV”) and DISH Network (“DISH”) is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in the franchise area are made reasonably aware that the service is available.<sup>10</sup> The two DBS providers’ subscriber growth reached approximately 26.1 million as of June 2005, comprising approximately 27.7 percent of all MVPD subscribers nationwide; DIRECTV has become the second largest, and DISH the third largest, MVPD provider.<sup>11</sup> In view of this DBS growth data, and the data discussed below showing that more than 15 percent of the households in each of the Franchise Areas are DBS subscribers, we conclude that the population of the Franchise Areas at issue here may be deemed reasonably aware of the availability of DBS service for purposes of the first prong of the competing provider test. With respect to the issue of program comparability, we find that the programming of the DBS providers satisfies the Commission’s program comparability criterion because the DBS providers offer substantially more than 12 channels of video programming, including more than one non-broadcast channel.<sup>12</sup> We find further that Adelphia has demonstrated that the Franchise Areas are served by at least two unaffiliated MVPDs, namely the two DBS providers, each of which offers comparable video programming to at least 50 percent of the households in the Franchise Areas. Therefore, the first prong of the competing provider test is satisfied.

4. The City of Beverly Hills contends that Adelphia’s petition fails the first prong of the competing provider test because DBS providers do not offer comparable programming, arguing specifically that they do not provide Public, Education, and Government (“PEG”) access channels.<sup>13</sup> We find that the

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<sup>5</sup> 47 U.S.C. § 543(a)(1).

<sup>6</sup> 47 C.F.R. § 76.906.

<sup>7</sup> See 47 U.S.C. § 543(1) and 47 C.F.R. § 76.905.

<sup>8</sup> See 47 C.F.R. §§ 76.906 & 907.

<sup>9</sup> 47 U.S.C. § 543(1)(1)(B); see also 47 C.F.R. § 76.905(b)(2).

<sup>10</sup> See *MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

<sup>11</sup> *Twelfth Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, FCC 06-11 at ¶¶ 6, 13, 72-73 (rel. March 3, 2006).

<sup>12</sup> See 47 C.F.R. § 76.905(g).

<sup>13</sup> Beverly Hills Opposition at 2.

City's argument is without merit because there is no requirement that the competing MVPDs provide identical programming to Adelphia; rather, comparable programming must be offered meaning "at least 12 channels of video programming, including at least one channel of non-broadcast service programming."<sup>14</sup> The Commission has determined that DBS providers satisfy this program comparability criterion.<sup>15</sup>

5. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceeds 15 percent of the households in a franchise area. The City did not dispute Adelphia's assertion that it is the largest MVPD provider in these Franchise Areas.<sup>16</sup>

6. Adelphia has provided a Media Business Corp. Enhanced Satellite Tracking Report showing the number of households for the four Franchise Areas.<sup>17</sup> Adelphia's Enhanced Satellite Tracking Report compared the Census block group level households within the franchise area to the Census block group level households in the respective zip codes as a whole, and allocated a proportion of DBS subscribers within each zip code to each Franchise Area.<sup>18</sup> The number of DBS subscribers were then compared to the 2000 Census household data to determine the number of households served by the DBS providers. Based upon the aggregate DBS subscriber penetration levels, calculated using the 2000 Census household data, we find that Adelphia has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest, is 37.24 percent in Beverly Hills, 27.55 percent in Calabasas, 20.44 percent in Ojai, and 21.38 percent in Palmdale. Therefore, the second prong of the competing provider test is satisfied.

7. The City of Beverly Hills disputes Adelphia's DBS penetration figures on the grounds that the City has not been able to verify the figures, which it also claims are based on flawed data.<sup>19</sup> The City challenges Adelphia's DBS subscriber allocations based on the use of five-digit zip code data, specifically for the 90210 zip code.<sup>20</sup> The City implies that there is something wrong with the allocation factor used by Adelphia to adjust for the fact that zip code 90210 does not lie entirely within the boundaries of Beverly Hills. The City claims Adelphia's approach and figures are suspect because the methodology used produces a higher DBS penetration rate in the portion of Beverly Hills within zip code 90210 than the portion within 90211 and 90212.<sup>21</sup> The fact that DBS penetration may vary within Beverly Hills is not grounds to reject the well-established allocation methodology used by Adelphia in this proceeding. The City has failed to provide any contradicting or credible data to demonstrate that the DBS penetration rate for Beverly Hills is below the established 15 percent threshold.

8. We accept the data provided by Adelphia as establishing a reasonable basis for finding that DBS penetration exceeds 15 percent in these four Franchise Areas. These penetration estimates provide a sufficient margin of error with respect to the 15 percent threshold established by the competing

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<sup>14</sup> See 47 C.F.R. § 76.905(g).

<sup>15</sup> See *supra* ¶ 3.

<sup>16</sup> Adelphia Petition at 5 and Exhibit 4.

<sup>17</sup> *Id.* at 5-6 and Exhibit 4.

<sup>18</sup> *Id.* at 6 and Exhibit 4.

<sup>19</sup> Beverly Hills Opposition at 3.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 5.

provider test, overcoming any concerns raised by unsupported arguments about DBS penetration imbalances in Beverly Hills.

### III. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that the petition for a determination of effective competition in Beverly Hills, Calabasas, Ojai and Palmdale filed by Adelphia Cable Communications **ARE GRANTED**.

10. **IT IS FURTHER ORDERED** that the certifications to regulate basic service rates granted to any local franchising authorities overseeing Adelphia cable Communications in the affected Franchise areas **ARE REVOKED**.

11. This action is taken pursuant to delegated authority under Section 0.283 of the Commission's rules.<sup>22</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert  
Deputy Chief, Policy Division  
Media Bureau

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<sup>22</sup> 47 C.F.R. § 0.283.

## ATTACHMENT A

File No. CSR 6387-E

FRANCHISE AREAS SERVED BY  
Adelphia Cable Communications on behalf of its Affiliates

## Competing Provider Test

Franchise Area	2000 Census Household <sup>23</sup>	DBS Subs Allocated	CPR: DBS Penetration Rate
Beverly Hills, CA	15,035	5,599	37.24%
Calabasas, CA	7,229	1,992	27.55%
Ojai, CA	3,088	631	20.44%
Palmdale, CA	34,285	7,331	21.38%

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<sup>23</sup> Household Data Figures, available at <http://factfinder.census.gov>; see Petition at 6 and Exhibit 5.